

**REGULAR**

**NUMBER:** 262.7

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING MUNICIPAL CODE SECTION I-3.10-370 TO REMOVE THE BARRIER TO APPLICATION OF THE “BALANCING TEST” UNDER THE PUBLIC RECORDS ACT

**HISTORY:** This Ordinance was introduced by the City Council at its meeting of February 21, 2012, upon motion by Councilmember Gomez and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS:**

**WHEREAS**, State transparent government laws, such as Government Code Section 6255, allow local governments to withhold records from disclosure in cases where the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record; and

**WHEREAS**, current provisions of Municipal Code Section I-3.10-370 prevent the City of Milpitas from utilizing the previously described balancing test or weighing of interests; and

**WHEREAS**, as a result, the public peace, health and safety are threatened by the potential release of drawings, plans, schedules, operational materials, and other records relating to security system design, conveyances and storage facilities of explosive, hazardous and/or volatile chemicals and materials, pump stations, potable water facilities, and other potential targets of terrorist attack; and

**WHEREAS**, as a result, the public peace, health and safety are threatened by the potential release of confidential police and firefighter procedures and investigation manuals and documents and emergency response plans, thereby threatening the lives and personal safety of both first responders and the community that they serve; and

**WHEREAS**, as a result, the public peace, health and safety are threatened by the potential release of investigative reports of the police department or security files that contain data sensitive to the security of staff and public buildings, thereby threatening the personal safety and security of both visitors and government employees at City buildings and public places.

**NOW THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

**SECTION 1. RECORD, BASIS FOR ACTION AND FINDINGS**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above and the findings and justifications in the supporting staff report for this Ordinance are found to be true and correct and are incorporated herein by reference and adopted as the findings of this City Council.

**SECTION 2. REPEAL OF SELECT PROVISIONS OF THE MUNICIPAL CODE WITH RETROACTIVE EFFECT**

The City Council hereby repeals Sections I-3.10-370(f) and (h) of the Municipal Code in their entirety. This repeal shall be made retroactive to February 7, 2012. Public records requests received prior to that date shall be subject to the prior regulatory scheme. Public records requests received on or after February 7, 2012, shall be subject to the Municipal Code with the amendments set forth herein.

**SECTION 3. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

**SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Government Code Section 36937 this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.